

Listening Session: Draft Chesapeake Bay Agreement

Held on March 11th, 2014 at DEQ's Piedmont Regional Office (Richmond, VA)

The following questions were submitted by participants:

Q: This PPT presentation will be available soon? When and where?

A: Yes, the presentation will be available on the Chesapeake Bay page of the DEQ website. Please email James Davis-Martin (james.davis-martin@deq.virginia.gov) if you have questions or trouble accessing the presentation online.

<http://www.deq.virginia.gov/Programs/Water/ChesapeakeBay.aspx>

Q: Is the goal to "add 300 public access sites" being distributed equally across the states? If so, how will you design strategies for adding 50 public access sites in Virginia to contribute our share?

A: The development of management strategies will determine this; there is not commitment right now delineating how many sites will be developed by each state. There are currently many interested parties, including National Parks and the Game Department. The goal is not that every state would add the same number of sites – we will come to some agreement regarding the distribution.

Q: You mentioned the importance of adaptive management, however, the draft Agreement does not acknowledge or address climate change impacts. Would it not be appropriate to include it where outcomes such as tidal wetlands (sea level rise) and brook trout habitat (warming waters) are threatened by the impacts of climate change?

A: The issue of Climate Change and how to best discuss it and/or include it in the agreement is under intense discussion at CBPO. Please submit your comment to CBPO online to express this concern.

Q: Can you elaborate more on why climate change is left out, especially given that one of the goals is environmental literacy?

A: First and foremost, please submit your comment online; the public is already weighing in on this topic. If you see page 4 of the agreement, there are a series of principles that serve as a framework for the agreement. One in particular notes that the Partnership will "anticipate changing conditions, including long-term trends in sea level, temperature, precipitation, land use and other variables." We recognize that for a good number of the signatories, there is disagreement on how to best include climate change.

In Virginia, we have a new administration that may have a different perspective than the last administration. The issue is under discussion right now.

Q: Past agreement had goals and outcomes that were aspirational, or “push goals.” Now, with this agreement, how do you see us marrying hard commitment statements with an ideal of stretch commitments?

A: As you noted, management strategies are a different animal in this agreement, one that is trying to catalog resources and strategies etc... I do believe that there are stretch goals included in the agreement. For example, our goals regarding Black ducks, urban tree canopy, and forest buffers will be challenging. At some point, we can only do what we can do. The General Assembly decides how much money we will have to spend. Limited financial resources will require creativity and the collective effort of non-profits and localities.

Q: How will Virginia address the issues of a “toxics” goal? It is not currently in the draft Agreement. Will Virginia reconsider prior “no” votes on that matter.

A: Virginia is currently reconsidering the previous toxics decision; we don't know when it will be resolved, as this is up to the governor. The issue is certainly on the table. Additionally, it should be noted that Virginia was not the only “no” vote. Many signatories were not certain about the added utility of having toxics in the agreement when they are already addressed by existing programs. Final inclusion of toxics in the Agreement will depend on the overall consensus of signatories.

Q: Many local waters in the bay watershed have fish consumption advisories due to PCBs etc., and the Bay Program has a history of commitment to reducing toxic contaminants. With no commitments to reducing toxics currently included in this agreement, how might that commitment change?

A: This is at the top of the list for discussion in response to the public comments that have been submitted. Please submit your comment online, and we will wait and see what is ultimately contained in the agreement.

Q: Under the new governor, what is the likelihood that the VA partnership would support the inclusion of goals for toxic pollution reductions and an affiliated management strategy once comments are reviewed? Chesapeake 2000 included toxic reduction goals and it is critically important that the 2014 draft develop plans to address this environmental and public health issue.

A: Please see answer(s) to additional questions regarding toxics.

Q: The TMDL is a good process and has done a good job of addressing Nitrogen, Phosphorous, and sediments. Is bacteria pollution being considered as a part of the TMDL?

A: No, it is not, but it is a part of many of the local TMDLs within the Bay watershed. In order to be included in the Bay TMDL, EPA would have to reissue the document. In many cases, the practices that we utilize to achieve reductions of nutrients in the Bay also produce bacteria reductions in local watersheds. Great examples are livestock exclusion practices, which are used to achieve bank stability and decrease erosion. They also limit direct manure deposition in waterways and thus decrease nutrients and bacteria.

Q: Can you clarify the expectation for meeting 2025 load reductions for Ches Bay TMDL. Will MS4s have (3) 5 year permit cycles OR be held to the 2025 deadline? Including the 2025 date in this document may cause confusion. Please clarify.

A: The last MS4 permit cycle includes 2025 and extends beyond. We will hold to the permit cycles, and we will also stick to the goals laid out in the WIP. As for the details of these permit cycles, we have the next 10 years to finesse them.

Q: What permit content for individual VPDES permits previously addressed by the aggregate loads for N&P under the CB program be dealt with and what might that permit content contain? If imposed via individual VPDES permits, do we expect push-back from industry?

A: All Virginia significant facilities in the Bay Watershed, with the exception of those in the James River watershed, have individual waste load allocations (WLAs) in their individual permits. In the James, we are currently doing a study to assess ChlA and all of the facilities have an aggregate allocation. We think that the industry as a whole knows that allocations are coming and will be compliant. The challenge is communicating to facilities that the science is correct and the allocations are "fair."

Q: Localities around the commonwealth have submitted proposed alternate BMPs for N, P, S to meet Chesapeake Bay load reduction requirements. What is the timeline for review and decision on these items?

A: Chesapeake Bay Program Office has a long line of BMPs that have been submitted for review. The review and approval process at CBPO takes a very long time. This is a problem and needs to move forward a little more quickly; we have been advocating for improvement in this area. If you look at the Chesapeake STAT website, noted below, you can see the list of BMPs in the queue for review.

http://stat.chesapeakebay.net/?q=node/130&quicktabs_10=3

Q: Will Virginia allow the dredging and repair of freshwater lakes as a BMP?

A: The largest freshwater lakes and reservoirs are actually simulated in the model itself rather than as a BMP. Smaller impoundments, such as stormwater detention basins, are an allowable practice in the current model. Maintenance of these stormwater BMPs, such as dredging, is also a requirement.

Q: How will the Bay Partnership address comments provided by the Scientific and Technical Advisory Committee?

A: STAC comments will be considered along with all of the other public comments received.

Q: Who will be held accountable when this fourth agreement is not lived up to?

A: The short answer is 'all of us.' The popular notion regarding the Bay agreement is that we haven't accomplished anything over the last 30 year; that this is simply not the case. Virginia has spent billions of dollars through the Water Quality Improvement Fund (WQIF) and on agricultural BMPs. We are held accountable, we do take this seriously, and we do the best we can with the resources we have in order to meet these commitments. Hopefully we make a lot of progress.

Additionally, there are backstop provisions included in the TMDL. The TMDL is the largest and most expensive portion of this agreement, and EPA has enforcement provisions so that the states will be held accountable; these include 2-year milestones and 2017 and 2025 checkpoints. We are obligated to meet those targets, and there are consequences if we don't.

Q: If the recent suit by the Attorneys General from 21 states has an impact on the national TMDL, how will it impact Virginia's efforts?

A: This won't affect us unless the court issues a ruling that limits the TMDL in some way. Even in this case, however, Virginia is committed to restoring the Chesapeake Bay whether or not the TMDL is in place. We are committed to the goals and outcomes outlined in the WIP.

Q: Please talk more about what is described as the opt-out provision. This appears to dimes the value of an agreement because a partner state could prioritize, for example, transportation funding over Bay funding.

A: Management strategies should be viewed as a coalition of the willing as opposed to an opt-out process. This is the first time this approach is being used, and it makes sense in many areas. It does not make sense to require, for example, participation by headwater states in developing oyster restoration plans. Additionally, some states are extremely limited financially, especially given the financial burdens related to the TMDL; this provision allows these states to prioritize and not make promises that they cannot deliver. We don't anticipate that major states will be opting out of much. These states, Virginia included, want to see progress across the board. Because many strategies are interrelated, it makes little sense to opt-out of one strategy that will ultimately impact

another. I would gently argue that states are not trying to get out of something but are rather trying to focus their resources most efficiently.

Q: Would it be possible to indicate in this agreement which goals and outcomes certain partners are/are not going to be able to participate in?

A: We can't make that commitment right now. For Virginia, we don't know the governor's preferences yet, and we will have to wait until the Executive Council meeting. As for other states, we can't speak for them either. That said, the management strategies are the portions of the agreement that are opt-in/opt-out; all signatories will be agreeing to the overall goals, which are collective regional commitments. Just because someone doesn't participate in a particular management strategy doesn't mean they don't recognize the importance of the goals.

Q: Can you elaborate more on the current thinking regarding who makes decisions regarding the agreement (i.e. the Executive Council vs. the Principle Staff Committee)?

A: The general consensus is that for the major goals and outcomes, it is important for the Executive Council, which typically meets once a year, to approve them. For other issues that come up over time, there is a desire for more flexibility in decision making by delegating approval authority to the Principle Staff Committee (PSC), which meets on a more regular basis. Discussions are ongoing among the Bay Program Partnership regarding these governance issues.

Q: Is there discussion about formalizing the buy-in of these decisions by the EC?

A: The EC remains the ultimate authority for all Bay Program decisions. The details of the formal approval process have not been finalized, but there has been much discussion regarding these governance issues.